

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ISAAC ARAGON,

Petitioner,

vs.

No. CV 16-00598 LH/KBM
No. CR 13-00569 LH

UNITED STATES OF AMERICA,

Respondent.

ORDER

THIS MATTER is before the Court on the *pro se* Petitioner, Isaac Aragon's 28 U.S.C. § 2241 Notice of Habeas Corpus Petition (CV Doc. 1). The Court has also reviewed the docket in Aragon's criminal case no. CR 13-00569 LH.

Aragon's Notice recites that he seeks relief under the Supreme Court's ruling in *Johnson v. United States* (CV Doc. 1). However, Aragon may only challenge his conviction and sentence under *Johnson* by a motion under 28 U.S.C. § 2255 and may not seek relief under Section 2241. *See* 28 U.S.C. § 2255(a) and (e); *Bradshaw v. Story*, 86 F.3d 164, 166 (10th Cir. 1996) ("The exclusive remedy for testing the validity of a judgment and sentence, unless it is inadequate or ineffective, is that provided for in 28 U.S.C. § 2255"). Therefore, the Court intends to recharacterize Aragon's Notice as a first 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence. Pursuant to *Castro v. United States*, 540 U.S. 375 (2003), when

a court recharacterizes a *pro se* litigant's motion as a first § 2255 motion . . . the district court must notify the *pro se* litigant that it intends to recharacterize the pleading, warn the litigant that this recharacterization means that any subsequent § 2255 motion will be subject to the restriction on "second or successive" motions, and provide the litigant an opportunity to withdraw the motion or to amend it so that it contains all the § 2255 claims he believes he has.

Id. at 383. Consistent with *Castro*, the Court notifies Aragon that it intends to recharacterize his Notice as a § 2255 motion and afford him an opportunity to withdraw the motion or to amend it to add additional claims he may have. *See* Rule 2 of the Rules Governing Section 2255 Proceedings for the United States District Courts (providing that a motion to vacate, set aside, or correct sentence must: “(1) specify all grounds for relief available to the moving party; (2) state the facts supporting each ground; (3) state the relief requested; (4) be printed, typewritten, or legibly handwritten; and (5) be signed under penalty of perjury by the movant.”). If Aragon fails to timely amend or withdraw his motion, then Aragon’s Notice will be recharacterized and any subsequent § 2255 motions will be subject to the restriction on “second or successive” motions in 28 U.S.C. §§ 2244 and 2255(h).

IT IS ORDERED that Petitioner Isaac Aragon is **GRANTED** leave to amend or withdraw his Notice (CV Doc. 1), which the Court intends to recharacterize as a motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255, within twenty-one (21) days of the entry of this Order.

IT IS FURTHER ORDERED that the Clerk of the Court **MAIL** a copy of this Order, together with a form § 2255 motion and instructions, to Aragon and to the Federal Public Defender.



UNITED STATES CHIEF MAGISTRATE JUDGE